

1 THE HONORABLE ROBERT S. LASNIK
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN M. KATHER,

11 Plaintiff,

12 v.

13 SUN LIFE ASSURANCE COMPANY OF
14 CANADA,

16 Defendant.

NO. CV06-0161RSL

STIPULATION AND ORDER RE:
BRIEFING SCHEDULE TO RESOLVE
ISSUE PERTAINING TO
PLAINTIFF'S BENEFIT LEVEL

17 I. BACKGROUND

18 This is an ERISA action for long-term disability benefits brought by
19 plaintiff John Kather against Sun Life Assurance Company. In the course of discussing
20 settlement of the case, the parties discovered a discrepancy concerning the amount of
21 benefits due Mr. Kather if he is determined to be disabled. In short, and without
22 waiver to either party's position, the policy issued by Sun Life appears to limit
23 payments for disability to 65% of Mr. Kather's pre-disability earnings, while certain
24 documents appear to indicate that Mr. Kather may have been eligible for benefits at a
25 75% of pre-disability earnings level.
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STIPULATION AND ORDER RE: BRIEFING
SCHEDULE TO RESOLVE ISSUE PERTAINING
TO PLAINTIFF'S BENEFIT LEVEL-1
[Case No. CV06-0161RSL]

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The plaintiff subpoenaed his former employer in an effort to resolve the discrepancy. The parties submitted three stipulations to the Court extending the time to add additional parties pending receipt of the information from the employer. The employer responded to the subpoena, but the discrepancy still exists. The parties wish to stipulate to a process to resolve this discrete issue.

II. STIPULATION

Plaintiff Kather and Defendant Sun Life Assurance Company of Canada
hereby stipulate to the following:

1. On September 15, 2006 each party will file a brief, no longer than 12 pages in length, addressing the question of whether Sun Life Assurance Company is responsible for benefit payments at 65% or 75% of predisability earnings (if Mr. Kather is determined to be disabled as defined in the Plan).

2. On September 21, 2006 either party may file a responsive brief, no longer than 6 pages in length.

3. The issue will be noted for September 21, 2006.

4. Mr. Kather shall be permitted to amend his complaint to add third parties to the action if the Court determines either (1) that Sun Life is not responsible for payments at the 75% benefit level (if Mr. Kather is determined to be disabled), or (2) that the issue cannot be resolved as a matter of law due to the presence of fact issues. Such amendment shall occur within seven days of any such Order.

SIRIANNI YOUTZ
MEIER & SPOONEMORE

Dated: August 3, 2006.

/s/ Richard E. Spoonemore
Richard E. Spoonemore (WSBA #21833)
Attorneys for Plaintiff Kather

STIPULATION AND ORDER RE: BRIEFING
SCHEDULE TO RESOLVE ISSUE PERTAINING
TO PLAINTIFF'S BENEFIT LEVEL- 2
[Case No. CV06-0161RSL]

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1 LANE POWELL PC
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Dated: August 3, 2006.

/s/ Robert J. Guite, by Richard E. Spoonemore,
per phone authorization 8/3/06
Robert J. Guite (WSBA #25753)
Attorneys for Defendant Sun Life
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6 **II. ORDER**
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Based upon the foregoing Stipulation, it is ordered that:

8 1. On September 15, 2006 each party will file a brief, no longer than
9 12 pages in length, addressing the question of whether Sun Life Assurance Company is
10 responsible for benefit payments at 65% or 75% of pre-disability earnings (if Mr. Kather
11 is determined to be disabled as defined in the Plan).

12 2. On September 21, 2006 either party may file a responsive brief, no
13 longer than 6 pages in length.

14 3. The issue will be noted for September 21, 2006.

15 4. Mr. Kather shall be permitted to amend his complaint to add third
16 parties to the action if the Court determines either (1) that Sun Life is not responsible
17 for payments at the 75% benefit level (if Mr. Kather is determined to be disabled), or
18 (2) that the issue cannot be resolved as a matter of law due to the presence of fact
19 issues. Such amendment shall occur within seven days of any such Order.

20 DATED this 7th day of August, 2006.
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23 Robert S. Lasnik
24 United States District Judge
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STIPULATION AND ORDER RE: BRIEFING
SCHEDULE TO RESOLVE ISSUE PERTAINING
TO PLAINTIFF'S BENEFIT LEVEL-3
[Case No. CV06-0161RSL]

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